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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/763,906

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EXAMINER

PAGE, EVAN RANDALL

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/763,906	<b>Applicant(s)</b> HORVATH, DWAYNE A.	
	<b>Examiner</b> EVAN R. PAGE	<b>Art Unit</b> 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/23/2004</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5,12,20,22,27-28 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 2,206,697 to Harter(**Harter**).

#### In Reference to Claim 1:

A simulated sharp edged weapon or toy comprising:

a housing(**Fig. 9, 66**),

an element mounted in and extending from said housing arranged such that said element has movement in relation to said housing in response to a force upon said element(**Fig. 9, 68**),

an electrical circuit mounted in said housing(**Fig. 4**) for providing an indication upon activation having a movement sensor actuator(**Fig. 9, combined structure of contact 67, spring 70, and member 68 which causes a signal to be generated indicating movement of member 68**) mounted in cooperation with said element to turn on at least one indicating device(**Fig. 4, 33,34**) providing indication of movement of said element.

#### In Reference to Claim 2:

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A simulated sharp edged weapon or toy of Claim 1 wherein said element when in use is arranged in said housing to move in one or compound directions in response to a force upon said element(**Fig. 9, element 68 arranged to move back with pressure and forwards after the pressure is released**).

In Reference to Claim 3:

A simulated sharp edged weapon or toy of Claim 1 wherein said element further includes a forgiving structure(**Fig. 9, 70, spring cushioning impact**) as to evade injury upon contact(**cushioning action of spring 70 reducing the force of impact and thus the likelihood of injury**).

In Reference to Claim 4:

A simulated sharp edged weapon or toy of Claim 1 wherein said element further includes being interchangeable with other elements(**Fig. 9, since tip 66 is depicted in the figure as being threaded, it could be removed to allow the replacement of member 68**).

In Reference to Claim 5:

A simulated sharp edged weapon or toy of Claim 1 wherein said at least one indicating device comprises a light source mounted in a readily observable location(**Fig. 4, 33,34**).

In Reference to Claim 12:

A simulated sharp edged weapon or toy comprising:  
a housing(**Fig. 9, 66**),

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an element having a tang mounted in and extending from said housing arranged such that in a useable position said element being moveable in response to a force upon said element(**Fig. 9, 68**),  
an electrical circuit(**Fig. 4**) for providing an indication upon activation having a movement sensor actuator(**Fig. 9, 67**) mounted in said housing in cooperation with said element to turn on at least one indicating device(**Fig. 4, 33,34**) providing indication of movement of said element.

In Reference to Claim 20:

A simulated sharp edged weapon or toy of Claim 12 wherein said tang further includes being at least partially surrounded by a resilient material(**Fig. 9, 70, spring**) residing between said tang and said housing allowing movement of said element in response to a force on said element.

In Reference to Claim 22:

A simulated sharp edged weapon or toy of Claim 12 wherein said movement sensor actuator further includes at least one switch(**Fig. 9, connection of contacts 67 and 68 in response to pressure**).

In Reference to Claim 27:

A simulated sharp edged weapon or toy of Claim 12 wherein said at least one indicating device comprises a light source mounted in a readily observable location(**Fig. 4, 33,34, Col. 1, Lines 37-45**).

In Reference to Claim 28:

A simulated sharp edged weapon or toy of Claim 27 wherein said light source is replaceable(**Fig. 4, 33,34, threaded bulbs**).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 13-19,21,23-26,29 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 2,206,697 to Harter(**Harter**).

In Reference to Claim 13:

Harter teaches:

A simulated sharp edged weapon or toy of Claim 12 further including an arrangement configured within said housing and in cooperation with said tang(**Fig. 9, 68**) comprising at least one surface(**Fig. 9, 66**) urging said tang to move in a generally transverse direction to the longitudinal plane of said housing in response to a force upon of said element(**Col. 2, Lines 2-4**).

But does not teach:

said arrangement being a cam arrangement,  
said surface being wedge shaped.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to make the housing and moving member a cam arrangement with a wedge shaped surface because Applicant has not disclosed that the housing and moving member being a cam arrangement with a wedge shaped surface provides an advantage, is used for a particular purpose, or solves a stated problem other than that which is solved by the cylindrical arrangement of the prior art. One of ordinary skill in the art, furthermore, would have expected Harter's electronic foil, and applicant's invention, to perform equally well with either the cylindrical arrangement taught by Nash or the claimed cam arrangement because both arrangements would perform the same function of closing contacts in response to movement of the moving member.

Therefore, it would have been prima facie obvious to modify Harter to obtain the invention as specified in claim 13 because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Harter.

In Reference to Claim 14:

A simulated sharp edged weapon or toy of Claim 13 wherein said cam arrangement further includes a restoring force produced thereby retaining and returning said element to an unswitched resting position(**Fig. 9, 70, spring**).

In Reference to Claim 15:

A simulated sharp edged weapon or toy of Claim 14 wherein said restoring force further includes a resilient material disposed in an operative location(**Fig. 9, 70, spring**).

In Reference to Claim 16:

A simulated sharp edged weapon or toy of Claim 15 wherein said resilient material comprises a shaped wire(**Fig. 9, 70, spring**).

In Reference to Claim 17:

A simulated sharp edged weapon or toy of Claim 13 wherein said housing further includes an elongate shaped cutout disposed longitudinally having a forward end, a rearward end, and a width, the forward end having an opening no wider than the width and, said tang comprising a shaped end for movably interconnecting within said elongate shaped cutout allowing movement of said element in response to a force on said element(**Fig. 9, member 68 interfacing with tip 66**).

In Reference to Claim 18:

A simulated sharp edged weapon or toy of Claim 13 wherein said tang further includes a first end and a second end, an elongate slot generally disposed longitudinally to said element between said first end and said second end, said elongate slot having a forward end, rearward end, and a width, a rod extending through said elongate slot is secured to said housing allowing movement of said element in response to a force on said element(**Fig. 9, member 68 interfacing with tip 66**).



In Reference to Claim 19:

A simulated sharp edged weapon or toy of Claim 18 wherein said elongate slot comprises being disposed on a bias in relation to said element longitudinal axis wherein said bias produces said cam arrangement(**Fig. 9, member 68 interfacing with tip 66**).

In Reference to Claim 21:

A simulated sharp edged weapon or toy of Claim 13 wherein said movement sensor actuator further includes at least one contact(**Fig. 9, 67,68**).

In Reference to Claim 23:

A simulated sharp edged weapon or toy of Claim 13 wherein said circuit further includes a battery(**Fig. 4, 31,32**).

In Reference to Claim 24:

A simulated sharp edged weapon or toy of Claim 23 wherein said battery is replaceable(**Fig. 4, 31,32**).

The Examiner takes Official Notice that making batteries replaceable is old and well known in the art, and it would have been obvious to one of ordinary skill in the art at the time of the invention to have made the batteries replaceable in order to have the invention be usable for more that the life of a single set of batteries.

In Reference to Claim 25:

A simulated sharp edged weapon or toy of Claim 21 wherein said movement sensor actuator further includes said contacts arranged in cooperation with said

cam arrangement(**Fig. 9, 66,68**) whereby movement of said element closes said contacts completing said circuit(**Col. 2, Lines 2-5**).

In Reference to Claim 26:

A simulated sharp edged weapon or toy of Claim 23 wherein said movement sensor actuator further includes said battery and said tang being arranged to contact each other completing said circuit upon movement of said element(**Col. 2, Lines 2-5, electrical contact made**).

In Reference to Claim 29:

A simulated sharp edged weapon or toy of Claim 27 wherein said light source is an LED light.

The examiner takes Official Notice that it is old and well know in the art to replace light bulbs with LEDs. It would have been obvious to one of ordinary skill in the art at the time of the invention to have replaced the light bulbs of Harter with LEDs because LEDs consume less power and have a greater operating life.

5. Claims 6-7,30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 2,206,697 to Harter(**Harter**) in view of US Patent 4,364,104 to Holahan et al.(**Holahan**)

In Reference to Claim 6:

Harter teaches:

A simulated sharp edged weapon or toy of Claim 5,

But does not teach:

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wherein said light source includes being mounted within a cutout in said element providing illumination.

Holahan teaches:

wherein said light source(**Fig. 4, 44**) includes being mounted within a cutout in said element(**Fig. 4, lamp 44 in hole in base 43**) providing illumination.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have replaced the member of Harter(**Fig. 9, 68**) with the lighted blade representation of Holahan and to have connected the light to the indicating mechanism in order increased the amusement value of the invention.

In Reference to Claim 7:

Harter as modified by Holahan teaches:

A simulated sharp edged weapon or toy of Claim 6 wherein said element further includes being made of at least partially light conducting material(**Holahan, Fig. 4, 38, light pipe**) being illuminated in response to movement of said element(**Harter, Col. 2, Lines 2-5**).

In Reference to Claim 30:

Harter as modified by Holahan teaches:

A simulated sharp edged weapon or toy of Claim 27 wherein said element further including a first cutout and said light source being mounted within said first cutout(**Fig. 4, lamp 44 in hole in base 43**).

In Reference to Claim 31:

Harter as modified by Holahan teaches:

A simulated sharp edged weapon or toy of Claim 30 wherein said element further includes a second cutout(**Holahan, Fig. 4, hole in light tube 38**) longitudinally adjacent to said first cutout and joined together by a first port(**Fig. 4, area where 38 and 43 meet**) whereby upon said light source being turned on, said light source illuminating said first and said second cutouts and said first port(**Col. 2, Lines 59-62**).

In Reference to Claim 32:

Harter as modified by Holahan teaches:

A simulated sharp edged weapon or toy of Claim 31

But does not teach:

wherein said element further includes a second port intersecting said first port and ending at the edge or edges of said element such that said light source illuminates said first and second cutouts and said first and second ports.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have added a second light pipe, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

6. Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 2,206,697 to Harter(**Harter**) in view of US Patent 4,772,028 to Rockhold et al.(**Rockhold**).

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In Reference to Claim 8:

Harter teaches:

A simulated sharp edged weapon or toy of Claim 1

But fails to teach:

wherein said at least one indicating device comprises a buzzer.

Rockhold teaches:

wherein said at least one indicating device comprises a buzzer(**Fig. 1, 33, speaker**).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have added the noise generating circuitry and speaker of Rockhold to the invention of Harter in order to provide an audio indication of impact in addition to the visual indication.

In Reference to Claim 9:

Harter as modified by Rockhold teaches:

A simulated sharp edged weapon or toy of Claim 1 wherein said at least one indicating device comprises a sound chip(**Rockhold, Fig. 4, 41**) to alert with a voice or other sound.

In Reference to Claim 10:

Harter as modified by Rockhold teaches:

A simulated sharp edged weapon or toy of Claim 1

But fails to teach:

wherein said at least one indicating device comprises a scoring device.

Rockhold further teaches:

wherein said at least one indicating device comprises a scoring device(**Rockhold, Fig. 4, 41**).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have added the wireless scoring system of the weapons simulation system of Rockhold to the invention as modified above in order to provide an indication of performance.

In Reference to Claim 11:

Harter as modified by Rockhold teaches:

A simulated sharp edged weapon or toy of Claim 1 wherein said at least one indicating device comprises a wireless transmitting device mounted in said housing(**Rockhold, Fig. 3, 58**) providing transmission to a wireless receiver in a remote location conveying indication of movement(**Rockhold, Fig. 1, 40**).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to EVAN R. PAGE whose telephone number is (571)270-5049. The examiner can normally be reached on Monday to Friday 7:30 A.M. to 5:00 P.M. EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571)272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kathleen Mosser/  
Primary Examiner, Art Unit 3714

ERP  
2/28/2008